

Application No. 09/923,469
Amendment dated November 12, 2003
Reply to Office Action of September 29, 2003
Attorney Docket No. 01-9343

REMARKS/ARGUMENTS

Claims 1-5, 9-11, 15, 17-19, 22-30 and 33 remain in this application. Claims 6-8, 12-14, 16, 20-21, 31-32, and 34 have been cancelled without prejudice to any future or pending application covering the same or similar subject matter. Claim 35 and 36 are new and introduce no new matter to this application. No new matter has been added to this application by way of any of the foregoing amendments.

Claim Objections

In the second paragraph of the Office Action, the Examiner objected to claims 29-30 because of the following informalities: In claims 29-30, the terms *upper attachment means* and *lower attachment means* lack positive antecedent basis. These claims have been amended to clarify the claimed subject matter. The Applicant thanks the Examiner for pointing this out. Accordingly, the Applicant respectfully requests withdrawal of the objections.

Claim Rejections Under 35 U.S.C. §102(e)

In the fourth paragraph of the Office Action, the Examiner rejected claims 1-2, 4-5, 9, 11, 15, 18, 27-28, 30, and 33 under 35 U.S.C. 102(e) as being anticipated by Diamond, Jr. (U.S. Patent NO. 6,231,487).

Anticipation is established only when a single prior art reference discloses expressly or under the principles of inherency, each and every element of the claimed

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invention." RCA Corp. v. Applied Digital Data Systems, Inc., (1984, CA FC) 221 U.S.P.Q. 385. The standard for lack of novelty, that is, for "anticipation," is one of strict identity. To anticipate a claim, a patent or a single prior art reference must contain all of the essential elements of the particular claims. Schroeder v. Owens-Corning Fiberglass Corp., 514 F.2d 901, 185 U.S.P.Q. 723 (9th Cir. 1975); and Cool-Fin Elecs. Corp. v. International Elec. Research Corp., 491 F.2d 660, 180 U.S.P.Q. 481 (9th Cir. 1974). "A rejection for anticipation under §102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." In re Paulsen, 31 U.S.P.Q.2d 1671, 1673 (Fed. Cir. 1994)(emphasis added).

As to Claim 1, the Examiner points to column 6, lines 64-67 in Diamond as disclosing feedback during exercise. Lines 64-67 of column 6 refer to opposing forces exerted by the user and the device, and nowhere in Diamond does it show, teach or suggest that the device provides feedback during use as required by Claim 1 of the present application. For this reason Claim 1 is allowable over the Diamond reference. Furthermore, Applicant has amended Claim 1 to further clarify the claimed embodiment by adding the phrase "wherein said upper member is configured to contact a portion of the frontal upper body of the user, and said lower member is configured to contact at least one upper leg portion of a user." Diamond is a device used for the lower body only and portions of the Diamond device contact the ankles and the buttocks of the user. For these reasons, Applicant believes that Claim 1 is patentable over Diamond and respectfully requests it be allowed.

Application No. 09/923,469
Amendment dated November 12, 2003
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Attorney Docket No. 01-9343

Because Claims 2, 4-5, 9, 11, 15, and 18 depend from allowable Claim 1, Applicant submits that they are also allowable.

In paragraph 12 of the Office Action, the Examiner rejected claim 27 as being anticipated by Diamond. Again, no feedback during use is shown, described, suggested or claimed in Diamond. Furthermore, Applicant has amended Claim 27 to further clarify the claimed embodiment by adding the phrase “wherein said upper member is configured to contact a portion of the frontal upper body of the user, and said lower member is configured to contact at least one upper leg portion of a user.” Diamond is a device used for the lower body only and portions of the Diamond device contact the ankles and the buttocks of the user. For these reasons, Applicant believes that Claim 27 is patentable over Diamond and respectfully requests it be allowed.

Because Claims 28 and 30 depend from allowable Claim 27, Applicant submits that they are also allowable.

In paragraph 15 of the Office Action, the Examiner rejected claim 33 as being anticipated by Diamond. Nowhere does Diamond show, describe or suggest a means for engaging an upper body portion as required by Claim 33. The Diamond device includes ankle supports 16a and 16b for receiving the ankles of a user, and a buttock support member 12 that contacts the buttocks and/or posterior thighs of a user. Nowhere does Diamond show, describe or suggest a means for engaging an upper body portion as required by Claim 33. For this reason, Applicant believes that Claim 33 is patentable over Diamond and respectfully requests it be allowed.

Application No. 09/923,469
Amendment dated November 12, 2003
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Attorney Docket No. 01-9343

Claim Rejections Under 35 U.S.C. §102(b)

In paragraph 16 of the Office Action, the Examiner rejected claims 1-3, 5, 9-10, 15, 17, 19, and 23-25 under 35 U.S.C. 102(b) as being anticipated by Abdo (U.S. Patent No. 6,022,303).

Regarding Claim 1, nowhere in Abdo does it show, teach or suggest that the device provides feedback during use as required by Claim 1 of the present application. For this reason Claim 1 is allowable over the Abdo reference. It would be impossible for the Abdo device to provide feedback as the flexible portions of the device are behind the user when in use. Furthermore, Applicant has amended Claim 1 to further clarify the claimed embodiment by adding the phrase “wherein said upper member is configured to contact a portion of the frontal upper body of the user, and said lower member is configured to contact at least one upper leg portion of a user.” The Abdo is a device has a base support member assembly that contacts the user’s posterior, not the upper leg of a user as required by amended Claim 1. For these reasons, Applicant believes that Claim 1 is patentable over Diamond and respectfully requests it be allowed.

Because Claims 2-3, 5, 9-10, 15, 17 and 19 depend from allowable Claim 1, Applicant submits that they are also allowable.

Application No. 09/923,469
Amendment dated November 12, 2003
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Attorney Docket No. 01-9343

Claim Rejections Under 35 U.S.C. §103

In paragraph 29 of the Office Action, the Examiner rejected claim 29 under 35 U.S.C. 103(a) as being unpatentable over Diamond. Because Claim 29 depends from allowable Claim 27, Applicant submits that it is also allowable and respectfully requests the Examiner withdraw this rejection.

In paragraph 30 of the Office Action, the Examiner rejected claims 22 and 26 under 35 U.S.C. 103(a) as being unpatentable over Abdo. Because Claims 22 and 26 depend from allowable Claim 1, Applicant submits that it is also allowable and respectfully requests the Examiner withdraw this rejection.

Applicant has added new Claims 35 and 36 that further define exemplary embodiments. Basis for these claims is found on page 6, lines 23-34 and in Figure 6 of the application. Therefore they introduce no new matter to this application. No new matter has been added to this application by way of any of the foregoing amendments.

Having responded to each of the Examiner's concerns, Applicant asserts that the application is now in condition for allowance and solicits such action. If a telephone interview will advance the allowance of the application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant requests the Examiner contact Applicant's representative at the number listed below.

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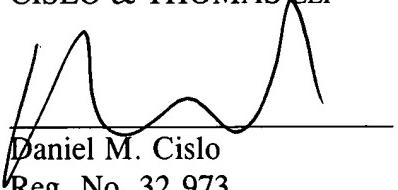
Application No. 09/923,469
Amendment dated November 12, 2003
Reply to Office Action of September 29, 2003
Attorney Docket No. 01-9343

It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's attorney's deposit account no. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: November 13th, 2003


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Enclosures

Certificate of First Class Mailing
Acknowledgement Postcard

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